

commander supported them, 73 percent were satisfied with their unit commander's response, and 73 percent said they would recommend others report if they were a victim of sexual assault.

And this is really important: The Gillibrand amendment does nothing to combat retaliation. The recent RAND survey found that the majority of reported retaliation does not come from commanders; it comes from peers. This is a cultural problem we have to get after, and certainly I would stand ready to work with Senator GILLIBRAND, Senator GRASSLEY, and all of my colleagues to look to see what we have to do to get at this peer-to-peer retaliation, which is the vast majority of what was reported.

Finally, the Gillibrand amendment actually weakens punishment for the crime of retaliation. By moving retaliation from article 92 to article 93 of the UCMJ, it would actually reduce the maximum punishment for this crime, and it, finally, prohibits the resources necessary to get at this problem. The amendment says we cannot add any additional resources to get after this.

Historic reforms have been made. They are working, based on data. Talking to dozens and dozens of prosecutors and untold victims, as a former sex crimes prosecutor who cares about nothing more than taking care of victims and making sure they have due process and are respected and deferred to, I must urge this body to reject the Gillibrand approach, which removes commanders from being held accountable where they must be held accountable.

Mr. President, I urge a "no" vote on the Gillibrand amendment.

The PRESIDING OFFICER. The Senator from New York.

Mrs. GILLIBRAND. Mr. President, I wish to respond to the last point and the first point that my colleague made that somehow this reform makes commanders less responsible.

The PRESIDING OFFICER. The Senator is advised that all time for debate has expired.

Mrs. GILLIBRAND. I ask unanimous consent to continue the debate for 5 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mrs. GILLIBRAND. Mr. President, this statement that somehow commanders are removed from responsibility and that we are not keeping commanders responsible, that couldn't be further from the truth. Today, commanders are the only ones responsible for good order and discipline at every level. The unit commander is responsible for order and discipline. Every aspect of the chain of command is responsible. It is their jobs to train troops, to maintain good order and discipline, to prevent rapes and crimes from being committed under their command, and to punish retaliation. They have failed in that duty.

In this chain of command, 97 percent of commanders are responsible and do

not have the convening authority we would like to give to prosecutors—97 percent, their job doesn't change one iota.

So to say you are making commanders less responsible is a false statement that has no bearing. In fact, they are 100 percent responsible for good order and discipline, for training their troops, to prevent these rapes, and to prosecute retaliation. In 1 year—they have been on notice for years about this, 25 years, and we have this zero tolerance. They are super on notice now—in 1 year, not one prosecution of retaliation.

This guy can prosecute retaliation under article 15. This guy can do something about retaliation. This guy, this guy, this guy. Only 3 percent have the right to convening authority, and that 3 percent needs to be moved to someone who is actually a lawyer, who is trained, who knows how to weigh evidence and can make the right decision, and that is not what is happening today.

So right now this supervisor and unit leader—in 60 percent of the cases where there is alleged gender discrimination or sexual harassment, it is the unit leader. One in seven of the alleged rapists is one of these commanders—chain of command.

There is a perspective by a survivor that this chain of command "does not have my back." So I would like to give it to another chain of command—senior military prosecutors—to make this decision, so her perspective can be: Someone has my back. This chain of command may well be tainted for her if her unit commander is harassing her and her rapist is in the chain of command. We need to professionalize the system.

We are trying to make the military the best prosecutorial system in the world, and they can do this mission. We need to give them the tools, and having this current status quo—the status quo that has been in charge of no retaliation and no rape for 25 years—is failing. To have the same rate of retaliation we had 2 years ago when the commanders said: You must trust us to do this—every one of these commanders does not have convening authority, but every one of these commanders could have stopped retaliation.

When you say it is just peer-to-peer, it is dishonest. Thirty percent of the cases of retaliation are administrative, 30 percent of the cases are professional. Only a commander can administer administrative or professional retaliation.

This culture must change, and if Congress doesn't take their responsibility to hold the Department of Defense accountable, no one will.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, the fiscal year 2015 NDAA passed last year included 34 new provisions dealing with

sexual assault. Commanders have barely had time to implement these provisions, let alone assess their effectiveness.

The fiscal year 2014 NDAA included more than 50 individual provisions, the most comprehensive set of changes to the Uniform Code of Military Justice since 1968.

Cumulative, the last three NDAs included 71 sections of law containing more than 100 unique requirements, including 16 congressional reporting requirements. This year's bill builds on that progress with 12 military justice provisions, including every proposal that was offered by Senator GILLIBRAND during the committee's markup of this legislation.

It is true that sexual assaults have been reduced. That is a fact. That is a fact. So to somehow allege that nothing has been done—her proposal is rejected by literally every member of the military whom I know who has years of experience.

We cannot remove the commanding officer from the chain of command, and that is what Senator GILLIBRAND's amendment and effort has been—to remove the commanding officer from responsibility—and I will steadfastly oppose it.

I hope that at some point the Senator from New York would acknowledge that we took in this bill every provision that she offered during the markup of the legislation.

So with respect and appreciation for Senator GILLIBRAND's passion and for her dedication on this issue, I respectfully disagree and urge my colleagues to reject this amendment.

Mr. President, I yield the floor.

UNANIMOUS CONSENT AGREEMENT—ORDER OF PROCEDURE

Mr. MCCAIN. Mr. President, I ask unanimous consent that the mandatory quorum call with respect to the cloture vote on the substitute amendment No. 1463 be waived; further, that there be 2 minutes of debate, equally divided, prior to each vote in the 2:15 p.m. series.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:37 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. PORTMAN).

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2016—Continued

AMENDMENT NO. 1549

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate equally divided prior to a vote on amendment No. 1549, offered